

## **New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning Parental Notification And Legal Rights (2004 amendments)**

### ***Public Law 108-36, Section 114(b)(1)(B)(xviii and xix)***

Two new CAPTA requirements, [set forth in 42 U.S.C. §5106a(b)(2)(A)(xviii and xix)], have been added to the CAPTA state grant eligibility provisions:

[An assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes]...

(1) ...provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant [and]

(2) ...provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment

### **Giving Parents Notice of the Complaints or Allegations Made Against Them**

These amendments reflect an interest in ensuring that CPS workers are aware of both the law and their legal limitations, and that they protect the rights of families served during investigation and intervention. They first require “a representative of the child protective services agency” to inform the individual subject to a child abuse and neglect investigation of the allegations against them (advisement). Although such “representative” is not defined, States may consider this terminology to include CPS caseworkers and others from their agencies (including their agents or contractors from private social services) that directly contact adults who are subject to such investigations.

The law requires that the allegations be disclosed “at the initial time of contact” but again does not define “initial time” or “contact”. States can consider this phrase to include first face-to-face contact between the CPS worker beginning to investigate an abuse/neglect report and the adult subject(s) of such investigation, as well as telephone contacts with those adults as part of the investigation process. In practical terms, CPS may not know at the outset of an investigation who, if anyone, has caused alleged child maltreatment. Therefore, States should consider providing such advisement to the parent(s), guardian(s), or adult caretaker(s) in the child’s home.

The law does not specify the form in which states are to provide the advisement. It does not require that this replicate, resemble, or be in a similar format to, what are called “Miranda Warnings” given by police to crime suspects, unless an applicable state or federal court, or state law, has required some similar type of special “rights notification.” Rather, through training and policy change, caseworkers investigating reports of child abuse and neglect can be instructed to provide some form of immediate notification, upon first contact, that caseworkers are for example looking into a report of alleged physical abuse of a specific child, of a failure to adequately supervise a child on one or more occasions

that placed them at risk of harm, of suspected sexual abuse, or of other specified types of child maltreatment.

The amendments do not specify any specific types of detail on the nature of reported maltreatment that investigating caseworkers are to immediately provide those subject to a child abuse and neglect investigation (e.g., the dates maltreatment occurred, implements used to inflict harm to the child, types of medical injuries the child is believed to have sustained), and States are free to decide how much initial detail will be provided. Detailed information is often still being identified throughout the investigative process. Later, if a child is removed from the home or judicial proceedings ensue, the parents or subject of the report will be provided with additional detail at an appropriate point in the case at which they have a full opportunity to refute CPS investigative findings. An individual can also refute those findings through an appeals process, following a CPS determination that abuse and/or neglect has been substantiated/founded.

In fulfilling this new mandate of providing information to those subject to a child abuse and neglect investigation about the child maltreatment accusations made against them, states should be careful not to compromise their own investigations or a concurrent criminal investigation that may lead to criminal charges against a perpetrator of serious child maltreatment. In cases alleging severe physical abuse or sexual abuse, for example, it is critical that CPS and law enforcement investigations be either jointly conducted or at the least carefully coordinated. Investigation of cases involving alleged perpetrators of serious crimes against children should be synchronized between CPS and law enforcement so that relevant evidence of offenses not be concealed or destroyed, child victims not be subjected to undue influence to give or not give information to CPS or law enforcement investigators, or that actions get taken that would place children at greater risk. Such coordination should help ensure that criminal investigations are not undermined.

Finally, by the amendment that includes an exception to these advisements to protect “the rights of the informant,” States can still continue to protect the identity of reporters of child maltreatment. CAPTA permits a State to keep the identity of a reporter confidential, regardless of whether that person was a mandated or non-mandated reporter, unless the court orders disclosure because the reporter made a false report intentionally (42 USC 5106(b)(3)).

### **Conducting Training of CPS Workers on Legal Rights of Families and Worker Legal Duties**

In a committee report and floor statements that preceded enactment of this legislation, Congress clearly stated that their intention in crafting a provision on training related to legal rights and duties was to enhance investigative caseworkers’ best practices for working in collaboration with families and to ensure that they are “fully aware of the extent and limits of their legal authority and the legal rights of parents in carrying out such investigations” (H. Rpt. 108-26, p 27).

As we have already stated, this new training provision applies to CPS “representatives” and may be broadly considered to mean CPS caseworkers, supervisors, and others from these agencies (including their agents or contractors from private agencies) who have direct contact with parents, guardians, and adult caretakers of children.. This training is especially important for any caseworkers that will be interacting with parents, guardians and adult caretakers during child maltreatment investigations.

Although we strongly encourage CPS agencies to develop, and to frequently provide, training on “legal rights and duties” topics, we note that Congress did not actually mandate its scope or content.

However, we provide the following guidance to help CPS agencies examine the scope of training that would be responsive to this congressional concern.

### Training on Legal Duties of CPS Workers and the Legal Rights of Families in the CPS Intervention Process

We suggest agency training directors consider the following topics for inclusion in curricula to be offered to both new and existing investigative staff:

#### *In-Home Investigative Practices*

The priority of, and process for, notifying parents of their rights, as set forth in state law and agency policy, during an abuse/neglect investigation (e.g., the timing of the notice, whether written materials on these rights are given to parents, providing language-appropriate information)

Balancing the safety of children with a parent's "right to know" various types of information

How to avoid compromising a potential criminal investigation related to the abuse/neglect

General procedures for requesting consent to access the home and/or see the children

The limited situations where, without parental consent, CPS caseworkers can lawfully enter a home and forcibly see a child without first seeking a court order for this purpose (e.g., what constitutes emergency situations or what the law calls "exigent circumstances")

The process that can be used to obtain judicial approval for a home entry and access to children, when the use of this process becomes necessary

Securing access to and interviewing children outside of their parents' presence

Securing access to and interviewing others in the home besides the children and their parents

The limits on what CPS caseworkers can do in conducting an in-home physical examination of the child, photographing visible injuries of the child and photographing the home environment, and arranging for out-of-home medical examinations when necessary even without parental permission

Legal issues related to touring the entire home, opening drawers, closet doors, refrigerators, etc., and removing physical evidence

When a CPS caseworker should bring the police into their investigative process, including for worker safety, and the process for CPS caseworkers to request assistance from police, a county prosecutor, and/or their own legal counsel when they have been refused access to the alleged child victim or any records required to conduct the investigation

#### *Investigation Activities in Schools and Elsewhere*

Understanding whether or not the school has an obligation to fully cooperate and not deny access to CPS

When and how to notify a school of the reasons for a child's interview and physical examination

How to handle the interviewing/examining of reported child victims of abuse and/or neglect at their public schools, private schools, day care centers, or at other public or private settings where they may be found

Whether and when to have school personnel present during the child's interview and examination (e.g., having a teacher present to make the child feel more comfortable; having a school nurse involved in a physical examination)

Getting information from third parties as part of the investigative process, including relevant laws and policies on confidentiality and information sharing, as well as obtaining court assistance to obtain this information where necessary

#### *Taking a Child Into Temporary Custody*

The legal process, documentation, and other steps that must be followed in child removal decisions

Whether and when under state law a CPS caseworker can take custody of a child, without a court order or parental consent, to obtain a medical exam (including x-rays) or mental health evaluation

Whether and when under state law a CPS caseworker can take a child, without a court order or parental consent, to a Children's Advocacy Center or other assessment program

Situations that, pursuant to state law, are appropriate for a CPS caseworker to take a child into custody for investigative purposes, or for CPS to take a child into custody because the child has suffered serious harm, or is at imminent risk of serious harm, within the home

#### *Legal Rights of Children and Parents During the CPS Intervention Process*

Communicating to the child and family, in age and language-appropriate ways, the legal basis/responsibility for child protective investigations and interventions

Advising parents of their right to refuse assistance, or treatment referrals, from the agency, and the legal obligations of the agency if the child is believed to be at risk of serious harm in the home

What happens in the juvenile court (dependency) process when a petition is filed